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On the Chopping Block: NLRB GC Issues Memorandum Detailing Policy Priorities

Labor Relations Update on **September 3, 2026**

On August 26, 2026, NLRB General Counsel Crystal Carey issued Memorandum GC 26-04, following the historic trend from recent predecessors, indicating the NLRB precedent she has asked or will ask the Board to revisit. Newly appointed General Counsels often look to overturn decisions rendered by the prior administration, so it is not surprising that Carey's memorandum primarily takes aim at Biden-era decisions.

Unlike many of her predecessors, Carey chose not to issue a mandatory submission memorandum immediately. Although Carey credited the Board's historic backlog of cases for the delay, it is probably not a coincidence that her memorandum comes on the heels of the Senate's confirmation of James Macy, the third Republican Board Member needed to establish the Republican majority necessary to issue precedent-shifting decisions.

Carey now faces the challenge of facilitating the following policy changes via Board decision making within an abbreviated timeframe. However, Carey has signaled her desire to move quickly by not requiring mandatory submissions to the home office in Washington on high-profile or other cases looking to change the law (which has been a common element of these memoranda.). Indeed, she notes that she has already asked the Board to revisit nearly half the decisions that she has identified as priority.

- ***Severance Agreements.*** At the top of Carey's list is the Board's 2023 decision, *McLaren Macomb*, 372 NLRB No. 58 (2023), which fundamentally altered an employer's ability to impose post-employment restrictive covenants on former employees by holding broad confidentiality and non-disparagement clauses in severance agreements unlawful.
- ***NLRB Remedial Authority.*** Carey identifies two major Biden-era decisions addressing the Board's remedial authority that she intends to ask the Board to overturn: *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), and *Thryv, Inc.*, 372 NLRB No. 22 (2022). *Cemex* authorized the Board to issue a

bargaining order if, within two weeks of receiving a union's demand for voluntary recognition, the employer fails to either voluntarily recognize the union or file its own petition for election; and *Thryv* broadened the Board's standard make-whole remedy to include compensation for "all direct or foreseeable pecuniary harm." In addition to *Cemex* and *Thryv*, she also already recommended bringing back consent orders, a remedial tool that allowed the NLRB to adopt employer-proposed settlements without the charging party's consent, which the Board effectively eliminated in 2024.

- ***Workplace Rules.*** Carey has already urged the Board to overrule *Stericycle*, 372 NLRB No. 113 (2023), which declared unlawful workplace rules that, from the perspective of a reasonable employee, *could* chill protected activity. She has also already asked the Board to revisit the stricter standard adopted to analyze workplace dress code policies in 2022.
- ***Employee Protected Activity***. While she has not yet identified the right cases, Carey intends to urge the Board to revisit two cases involving when and whether employee conduct loses the protection of the NLRA. She intends to ask the Board to revisit *Lion Elastomers, LLC, II*, 372 NLRB No. 83 (2023), where the Board returned to a trio of context-specific standards to determine when an employee's outburst loses the protection of the NLRA. She will also urge the Board to abandon the totality-of-the-circumstances standard to determine when individual employee action qualifies as protected concerted activity.
- ***Employer Speech.*** Carey has already asked the Board to lessen restrictions on employer speech by reconsidering two Biden-era decisions. First, she argues the Board should overturn the 2024 decision sharply restricting an employer's right to share its views on unionization in favor of the prior precedent permitting such opinion sharing. Second, she advocates eliminating the Board's prohibition on mandatory captive audience speeches.
- ***Unilateral Changes to Terms and Conditions.*** Carey also already recommended the Board return to the "contract coverage" test long used by certain circuit courts to determine whether a unilateral change fell within the scope of some contractual provision and overturn the 2024 decision imposing a "clear and unmistakable waiver" standard. She also indicated her intent to revisit a pair of 2023 decisions which restricted an employer's right to make unilateral changes consistent with past practice.
- ***Union Dues Issues***. Finally, Carey intends to ask the Board to revisit two cases involving different union dues issues: first, a 2022 decision where the Board rejected 60-year-old precedent to hold that contractual dues deductions survive the expiration of a CBA; and second, an Obama-era decision where the Board held that unions need not proactively notify new hires and nonmembers about their right to

pay reduced fees and dues.

Employers should be prepared for the Board to issue policy-shifting decisions in short order. On several occasions, the Board has issued a flurry of major decisions on or around the Labor Day holiday. Although the Board has not yet issued any such decisions, the cemented Republican three-member majority portends a busy fall. If the decisions of the first Trump administration's Board are any indication, employers can likely anticipate favorable, employer-friendly outcomes.

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